

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2023

Public Authority: Bristol City Council

Address: The Council House
College Green
Bristol
BS1 5TR

Decision (including any steps ordered)

1. The complainant requested information from Bristol City Council ('the Council'). The Commissioner's decision is that the Council is entitled to rely on section 40(2) of FOIA to withhold some of the requested information.
2. The Commissioner does not require the Council to take any steps.

Request and response

3. On 2 March 2022, the complainant made the following request for information to the Council:

"Please provide the following information:

1. All correspondence between officers, councillors and members of the public regarding any Bristol City councillors' non-payment of council tax and their inability to vote on council tax setting at the February 2022 Full Council that considered the Budget and associated matters.

All correspondence should include all correspondence, meaning mobile phone calls, emails, letters, text messages and all social media including Whatsapp, Facebook and Twitter.

2. The names of all councillors who did not pay council tax during the Municipal Year of 2021-22, the reasons they gave for non-payment, the amounts they were in arrears, how long they were in arrears, whether they paid up in full or partially, and whether they voted on the council tax setting and associated votes at the 2022 Budget Full Council that set council tax for 2022-23.
 3. All actions the Council has taken against any councillor regarding non-payment of council tax, including but not limited to court action and the deduction of the council tax due from their councillor allowance.
 4. The full details of councillors still in arrears from previous financial years, as in item 2 above."
4. The Council refused to provide some of the requested information citing section 40(2) (personal information) of FOIA as its basis for doing so.

Reasons for decision

Section 40 - personal information

5. This reasoning covers whether the Council was correct to apply section 40(2) of FOIA to the request.¹
6. Section 40(2) says that information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
7. In this case, the Commissioner is satisfied that the withheld information is personal data because it would reveal the identity of a Councillor and details relating to their council tax arrears.
8. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
9. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider whether there is a legitimate interest in disclosing the information, whether disclosure of the

¹ <https://www.legislation.gov.uk/ukpga/2000/36/section/40>

information is necessary and whether these interests override the rights and freedoms of the individuals whose personal information it is.

10. The Commissioner considers that the complainant is pursuing a legitimate interest and that disclosure of the requested information is necessary to meet that legitimate interest.
11. It is necessary to balance the legitimate interests in disclosure against the fundamental rights and freedoms of the data subjects. In doing so, it is necessary to consider the impact of disclosure.
12. In the Commissioner's view, a key issue when considering the balancing test is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to the individuals, taking into account whether or not they have consented to its disclosure.
13. In this case the Commissioner appreciates that there is a legitimate interest in the public knowing when Councillors are in council tax arrears and who those Councillors are. This was considered in the Upper Tribunal decision *Kate Markus QC in DH v Information Commissioner and Bolton Council*: [2016] UKUT 139 (AAC), which found that the councillors' names who were in council tax arrears should be disclosed.²
14. The complainant referred to this decision by the Upper Tribunal in their request for an internal review, and the Council took this into consideration. However, the Council raised Judge K Markus' point of consideration in the Upper Tribunal decision:

"There may be exceptional cases in which the personal circumstances of a councillor are so compelling that a councillor should be protected from such exposure."
15. The Council explained its reasons to the Commissioner as to why the circumstances in this case are compelling enough that to disclose the information would be unfair and unlawful.

²

https://assets.publishing.service.gov.uk/media/5785141fe5274a0da9000105/GIA_4597_2014-00.pdf

16. The Commissioner has chosen not to put the council's explanations in this decision notice, as to do so could, in itself, reveal personal data of the Councillor which could lead to their identity being revealed.
17. Having considered the Council's explanations for this case, the Commissioner has determined that there is insufficient legitimate interest to outweigh the fundamental rights and freedoms of the individual in this specific case and considers that there is no legal basis for the council to disclose the withheld information and to do so would be in breach of principle (a).
18. The Commissioners decision is that the Council is entitled to rely on section 40(2) of FOIA to refuse to provide the information it has withheld to this request.

Procedural matters

19. Under section 10(1) of FOIA a public authority must communicate non-exempt information within 20 working days of the request. Under section 17(1) it must issue a refusal notice in respect of any exempt information within the same timescale. In this case, the complainant submitted their request on 2 March 2022 but the Council did not provide relevant information or a refusal notice until 20 May 2022. The Council therefore breached section 10(1) and 17(1) of FOIA.

Right of appeal

20. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

21. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
22. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Michael Lea
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